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January 17, 2025

Via ECF

Honorable Renée Marie Bumb, Chief U.S.D.J.
United States District Court of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
One John F. Gerry Plaza
Fourth & Cooper Streets
Camden, NJ 08101

Re: In re Toronto-Dominion Bank/First Horizon Corporation Securities Litigation
Case No. 1:23-cv-02763-RMB -AMD

Dear Chief Judge Bumb:

We write on behalf of Defendants The Toronto-Dominion Bank, TD Bank US Holding Company, Bharat B. Masrani, Kelvin Vi Luan Tran, and Leo Salom (together, the “TD Defendants”) in connection with the Joint Stipulation and Order entered by the Court on November 5, 2024 (ECF 62). That Stipulation and Order concerned Plaintiffs’ request to further amend their complaint, and under its terms, defendants are to advise Plaintiffs today whether they consent to the filing of a new, third amended complaint.

We write to respectfully advise the Court that, in accordance with the Stipulation and Order, the TD Defendants have today advised Plaintiffs that they consent to the filing of the third amended complaint (which was provided to defendants on December 20, 2024). The TD Defendants have consented to its filing solely in the interests of avoiding burdening the Court with motion practice over the amendment, and streamlining the briefing over the sufficiency of Plaintiffs’ claims in this case. The TD Defendants’ consent is in no way intended to suggest that the new complaint—which is plaintiffs’ fourth attempt to plead claims in this case (*see* ECF Nos. 1, 31, 46, 61)—states viable claims on the merits.

Indeed, each successive amendment has only made clearer that Plaintiffs cannot state a claim, let alone under the stringent pleading standards imposed by the Private Securities Litigation Reform Act of 1995 and Federal Rule of Civil Procedure 9(b). Under the Stipulation and Order, the parties are to file a proposed schedule by January 31, 2025 concerning Defendants’ responses to the new complaint. The TD Defendants intend to move to dismiss the complaint on multiple

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independent grounds, including (1) Plaintiffs do not have statutory standing to assert their claims under Section 10(b) of the Securities Exchange Act of 1934 against the TD Defendants because they allege misrepresentations about TD, not First Horizon.; (2) Plaintiffs have not adequately alleged scienter (*i.e.*, that the TD Defendants knew (or were reckless as to the fact) that the First Horizon merger could not close because of TD's alleged regulatory compliance issues) as none of the added allegations—and nothing in Plaintiffs' 275-page complaint—even raises a plausible inference, much less the requisite strong inference, that the TD Defendants committed to closing the First Horizon transaction on a timeline and under conditions that they knew TD could not satisfy.; and (3) Plaintiffs' claim under Section 14(a) of the Exchange Act fails under well-established law because the merger was not consummated.

For these and other reasons, the TD Defendants intend to move to dismiss the new complaint and, as noted, will work with Plaintiffs on a proposed schedule to be submitted to the Court on January 31, 2015. To the extent that the Court wishes to hold a pre-motion conference pursuant to Rule I.A of Your Honor's Individual Rules and Procedures, then we will ensure that the schedule provides for such a conference and the associated letters to be submitted by each party. Alternatively, if the Court does not consider it necessary or helpful to hold that conference in advance of formal briefing, then we can simply propose a briefing schedule for the motion to dismiss.

We appreciate the Court's guidance as to next appropriate steps, and are available at the Court's convenience to answer any questions.

Respectfully submitted,

BROWN & CONNERY, LLP


Susan M. Leming

cc: All counsel of record (*via ECF*)